

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS BELL TELEPHONE COMPANY )  
(Ameritech Illinois) )  
and Nexus Communications, Inc. )

Joint Petition for Approval of Negotiated )  
Interconnection Agreement dated July 8, 2002 )  
pursuant to 47 U.S.C. § 252 )

02 - \_\_\_\_\_

**JOINT PETITION FOR APPROVAL OF NEGOTIATED  
INTERCONNECTION AGREEMENT BETWEEN  
NEXUS COMMUNICATIONS, INC. AND AMERITECH ILLINOIS**

Illinois Bell Telephone Company ("Ameritech Illinois") and Nexus Communications, Inc. through counsel, hereby request that the Commission review and approve the attached Interconnection Agreement dated July 8, 2002 pursuant to Sections 252(a)(1) and 252(e) of the Telecommunications Act of 1996 47 U.S.C. §§ 252 (a)(1) and 252(e), (the "Act"). In support of their request, the parties state as follows:

1. The Agreement was arrived at through good faith negotiations between the parties as contemplated by Section 252(a) of the Act and provides for interconnection, access to unbundled network elements, resale and other services addressed in Section 251 of the Act.

2. Pursuant to Section 252(e)(2) the Commission may only reject a negotiated agreement if it finds that (1) the agreement discriminates against another carrier or (2) implementation of the Agreement would not be consistent with the public interest, convenience and necessity. Neither basis for rejection is present here.

3. As set forth in the attached Verification of Eric Larsen, Ameritech Illinois will make the Agreement available to any other telecommunications carrier operating within its territory. Other carriers are also free to negotiate their own terms and conditions pursuant to the applicable provisions of the Act. For this reason, the Agreement is not discriminatory.

4. In addition, Mr. Larsen's Verification demonstrates that implementation of the Agreement is consistent with the public interest because it will promote competition and enhance Nexus' ability to provide Illinois telecommunications users with a competitive alternative for data and transport services.

DOCKET NO. 02-0596  
Exhibit No. 6  
Witness 11/6/02 GW

5. In accordance with Section 252(e)(4) of the Act, the Agreement will be deemed approved if the Commission does not act to approve or reject the Agreement within 90 days from the date of this submission.

6. Copies of the Agreement are available for public inspection in Ameritech Illinois and Nexus' public offices.

WHEREFORE, Ameritech Illinois and Nexus Communications, Inc. respectfully request that the Commission approve the attached interconnection Agreement under Section 252(e) of the Act as expeditiously as possible.

Respectfully submitted this \_\_\_\_\_ day of August, 2002

**AMERITECH ILLINOIS**

---

Mark Kerber/James Huttenhower  
Ameritech Services, Inc.  
225 West Randolph Street, 25D  
Chicago, Illinois 60606  
(312) 727-7140  
Counsel

**Nexus Communications, Inc.**

---

Steven Fenker  
Nexus Communications, Inc.  
7830 North Central Drive, Suite C  
Lewis Center, Oh 43035  
(740) 549-1092  
Vice President

**INTERCONNECTION AGREEMENT UNDER SECTIONS  
251 AND 252 OF THE TELECOMMUNICATIONS ACT  
OF 1996**

**between one or more of**

**Illinois Bell Telephone Company,  
Indiana Bell Telephone Company Incorporated,  
Michigan Bell Telephone Company d/b/a Ameritech  
Michigan,  
Nevada Bell Telephone Company d/b/a SBC Nevada  
Bell Telephone Company,  
The Ohio Bell Telephone Company,  
Pacific Bell Telephone Company,  
The Southern New England Telephone Company,  
Southwestern Bell Telephone, L.P. d/b/a  
Southwestern Bell Telephone Company, Wisconsin  
Bell, Inc. d/b/a Ameritech Wisconsin**

**and**

**Nexus Communications, Inc.**

affect the rights of the Indemnified Party, and shall also be entitled to employ separate counsel for such defense at such Indemnified Party's expense.

14.8.7 If the Indemnifying Party does not accept the defense of any indemnified claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party.

14.8.8 In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. If the Indemnifying Party refuses to agree to the presented settlement, the Indemnifying Party may take over the defense. If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party.

14.8.9 Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in Section 20.

## **15. PERFORMANCE MEASURES**

15.1 Attachment Performance Measures provides monetary payments for failure to meet specified performance standards. The provisions of that Attachment constitute the sole obligation of SBC-13STATE to pay damages or financial penalties for failure to meet specified performance standards identified in such Attachment and all other Attachments to this Agreement.

## **16. INTELLECTUAL PROPERTY**

16.1 Any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party.

## **17. NOTICES**

17.1 Subject to Section 17.2, notices given by one Party to the other Party under this Agreement shall be in writing (unless specifically provided otherwise herein), and unless otherwise expressly required by this Agreement to be delivered to another representative or point of contact, shall be

17.1.1 delivered personally;

## 21. INTERVENING LAW

- 21.1 This Agreement is entered into as a result of both private negotiations between the Parties and the incorporation of some of the results of arbitration by the Commissions. In the event that any of the rates, terms and/or conditions herein, or any of the laws or regulations that were the basis or rationale for such rates, terms and/or conditions in the Agreement, are invalidated, modified or stayed by any action of any state or federal regulatory or legislative bodies or courts of competent jurisdiction, the affected provision shall be immediately invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either Party. In such event, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Without limiting the general applicability of the foregoing, the Parties acknowledge that on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999) (and on remand, *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000)) and *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (1999) and on appeal to and remand by the United States Supreme Court, *Verizon v. FCC, et. al*, 535 U.S. \_\_ (2002). The Parties further acknowledge that on May 24, 2002, the United States District Court for the District of Columbia Circuit issued its decision in *United States Telecom Association, et. al v. FCC*, No. 00-101, in which the Court granted the petitions for review of the Federal Communications Commission's ("FCC") Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98 (FCC 99-238) ("the UNE Remand Order") and the FCC's Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (FCC 99-355) (rel. December 9, 1999) ("the Line Sharing Order"), specifically vacated the Line Sharing Order, and remanded both these orders to the FCC for further consideration in accordance with the decision. In addition, on November 24, 1999, the FCC issued its Supplemental Order *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, (FCC 99-370) and on June 2, 2000, its Supplemental Order Clarification, (FCC 00-183), in CC Docket 96-98. The Parties further acknowledge that on April 27, 2001, the FCC released its Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound Traffic* (the "ISP Intercarrier Compensation Order") which was remanded in *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002). By executing this Agreement and any Amendments to such Agreement and carrying out the rates, terms and conditions herein, SBC-13STATE does not waive any of its legal rights, and expressly reserves all of its rights, remedies and arguments, including but not limited to those related to any of the foregoing decisions or proceedings or any remands thereof, including its right to seek legal

review or a stay pending appeal of such decisions and its rights under this Intervening Law paragraph. These rights also include but are not limited to SBC-13STATE's right to exercise its option at any time in the future to invoke these Intervening Law or Change of Law provisions to adopt on a date specified by SBC-13STATE the FCC ISP terminating compensation plan, after which date ISP-bound traffic will be subject to the FCC's prescribed terminating compensation rates, and other terms and conditions.

## 22. GOVERNING LAW

- 22.1 Unless otherwise provided by Applicable Law, this Agreement shall be governed by and construed in accordance with the Act, the FCC Rules and Regulations interpreting the Act and other applicable federal law. To the extent that federal law would apply state law in interpreting this Agreement, the domestic laws of the state in which the Interconnection, Resale Services, Network Elements, functions, facilities, products and services at issue are furnished or sought shall apply, without regard to that state's conflict of laws principles. The Parties submit to personal jurisdiction in Little Rock, Arkansas; San Francisco, California; New Haven, Connecticut; Chicago, Illinois; Indianapolis, Indiana; Topeka, Kansas; Detroit, Michigan; St. Louis, Missouri; Reno, Nevada; Columbus, Ohio; Oklahoma City, Oklahoma, Dallas, Texas and Milwaukee, Wisconsin, and waive any and all objection to any such venue.

## 23. REGULATORY APPROVAL

- 23.1 The Parties understand and agree that this Agreement and any amendment or modification hereto will be filed with the Commission for approval in accordance with Section 252 of the Act and may thereafter be filed with the FCC. The Parties believe in good faith and agree that the services to be provided under this Agreement are in the public interest. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252 of the Act without modification.
- 23.2 Unless otherwise agreed, if the designated Party fails to file this agreement with the appropriate State commission within sixty (60) days of both Parties signatures, then this signed agreement is null and no longer valid. In such event, the designated Party may not file this signed agreement for approval unless it obtains the express written permission of the other Party. If the other Party objects to the filing of this signed agreement following the expiration of the sixty (60) days referenced above, then either Party may initiate negotiations for a successor agreement under Section 251/252 of the Act. If negotiations are commenced by either Party, then the Parties will determine what rates, terms and conditions, if any, will apply until such time as a successor agreement is reached. In any event, upon approval of the successor agreement by the appropriate State commission, the rates, terms and conditions of such successor agreement shall retroactively apply back to the expiration and/or

## **APPENDIX PERFORMANCE MEASUREMENTS**

**TABLE OF CONTENTS**

<b>1. INTRODUCTION.....</b>	<b>3</b>
<b>2. SOLE REMEDY.....</b>	<b>3</b>
<b>3. DEFINITIONS .....</b>	<b>4</b>
<b>4. OCCURRENCE OF A SPECIFIED PERFORMANCE BREACH.....</b>	<b>5</b>
<b>5. LIQUIDATED DAMAGES AS FORM OF REMEDY.....</b>	<b>5</b>
<b>6. LIQUIDATED DAMAGES PAYMENT PLAN; GENERALLY.....</b>	<b>5</b>
<b>7. LIQUIDATED DAMAGES; METHOD OF CALCULATION .....</b>	<b>6</b>
<b>8. TABLE OF CRITICAL VALUES .....</b>	<b>9</b>
<b>9. LIMITATIONS .....</b>	<b>11</b>
<b>10. RECORDS AND REPORTS .....</b>	<b>11</b>
<b>11 AUDITS .....</b>	<b>12</b>
<b>12. INITIAL IMPLEMENTATION .....</b>	<b>13</b>
<b>13. PERFORMANCE MEASUREMENTS .....</b>	<b>13</b>



## APPENDIX PERFORMANCE MEASUREMENTS

### 1. INTRODUCTION

- 1.1 SBC Communications Inc. (SBC) means the holding company which owns the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company d/b/a Ameritech Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company and/or Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.
- 1.2 As used herein, SBC-11STATE means the applicable above listed ILEC doing business in Arkansas, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Ohio, Oklahoma, Texas, and Wisconsin.
- 1.3 As used herein, **Service Bureau Provider** means a company which has been engaged by CLEC to act as its agent for purposes of accessing SBC-LEC's OSS application-to-application interfaces.
- 1.4 The performance measurements contained herein, notwithstanding any provisions in any other appendix in this Agreement, are not intended to create, modify or otherwise affect parties' rights and obligations with respect to OSS access. The existence of any particular performance measure, or the language describing that measure, is not evidence that CLEC is entitled to any particular manner of access, nor is it evidence SBC-11STATE is limited to providing any particular manner of access. The parties' rights and obligations to such access are defined elsewhere, including the relevant laws, FCC and PUC decisions/regulations, tariffs, and within this interconnection agreement.

### 2. SOLE REMEDY

- 2.1 These liquidated damages shall be the sole and exclusive remedy of CLEC for SBC 11-STATE's failure to meet specified performance measures and shall be in lieu of any other damages CLEC might otherwise seek for such breach through any claim or suit brought under any contract or tariff.
- 2.2 In Wisconsin, the Public Service Commission of Wisconsin has ordered a remedy plan in docket in Docket No. 6720 -TI -160, effective September 25, 2001 ("Wisconsin Remedy Plan"). CLEC acknowledges and agrees that if it elects to include this Appendix as a part of its Interconnection Agreement in Wisconsin, the performance measurements, remedy plan, and liquidated damages set forth in this Appendix shall apply in lieu of the Wisconsin Remedy Plan and CLEC expressly

waives its rights to receive performance measurements, the remedy plan or liquidated damages under the Wisconsin Remedy Plan.

### 3. DEFINITIONS

3.1 When used in this Appendix, the following terms will have the meanings indicated:

#### 3.1.1 Performance Criteria

3.1.1.1 The target level of SBC-11STATE performance specified for each Performance Measurement. Generally, the Performance Measurements contained in this Appendix specify performance equal to that SBC-11STATE achieves for itself in providing equivalent end user service as the Performance Criterion. Parity exists when the measured results in a single month (whether in the form of means, proportions, or rates) for the same measure, at equivalent disaggregation for SBC-11STATE and CLEC are used to calculate an appropriate test statistic and the resulting test value has an associated probability that is no less than the critical probability indicated in the Table of Critical Values shown in Section 8.

3.1.1.2 Performance Measurements for which parity calculations are not possible have a specified *standard* as the Performance Criterion. Compliance is assessed by comparing the result obtained by the CLEC with the applicable standard using an appropriate statistical test. The result is compliant if the probability associated with the test statistic is no less than the critical probability indicated in the Table of Critical Values shown in Section 8.

#### 3.1.2 Performance Measures

3.1.2.1 The set of measures listed in all of Section 13 of this Appendix.

#### 3.1.3 Non-compliance

3.1.3.1 The failure by SBC-11STATE to meet the Performance Criteria for any performance measure identified as an available measurement type in Section 13.

#### 4. OCCURRENCE OF A SPECIFIED PERFORMANCE BREACH

- 4.1 In recognition of either: 1) the loss of End User opportunities, revenues and goodwill which a CLEC might sustain in the event of a Specified Performance Breach; 2) the uncertainty, in the event of a Specified Performance Breach, of a CLEC having available to its End User opportunities similar to those opportunities available to SBC-11STATE at the time of a breach; or 3) the difficulty of accurately ascertaining the amount of damages a CLEC would sustain if a Specified Performance Breach occurs, SBC-11STATE agrees to pay the CLEC Liquidated Damages, subject to Section 5.1 below.

#### 5. LIQUIDATED DAMAGES AS FORM OF REMEDY

- 5.1 The Parties agree and acknowledge that a) the Liquidated Damages are not a penalty and have been determined based upon the facts and circumstances known by the Parties at the time of the negotiation and entering into this Agreement, with due consideration given to the performance expectations of each Party; b) the Liquidated Damages constitute a reasonable approximation of the damages the CLEC would sustain if its damages were readily ascertainable; c) neither Party will be required to provide any proof of Liquidated Damages; and d) the Liquidated Damages provided herein will constitute full compensation for any failure of SBC to meet a specified performance commitment in this Attachment and any specific time commitments for the same activity contained in any other Attachments or Appendices.

#### 6. LIQUIDATED DAMAGES PAYMENT PLAN; GENERALLY

- 6.1 Liquidated damages apply to the available, non-diagnostic measurements of the FCC Merger Conditions designated in Section 13 below, when SBC-11STATE delivers non-compliant performance as defined in 3.1.3. In no event shall SBC-11STATE be required to pay liquidated damages for any performance which was at parity or in compliance with the applicable benchmark at the time that the performance occurred.
- 6.2 The Table of Critical Values (Section 8) gives the maximum number, F, of measurements of those required to be reported to the CLEC that may fail the Performance Criteria in any month. Liquidated damages apply to Non-compliant measures that are in excess of the applicable value of F.
- 6.3 None of the liquidated damages provisions set forth in this proposal will apply during the first three months after a CLEC first purchases the type of service or unbundled network element(s) associated with a particular performance measurement or introduction of a new measure.
- 6.4 There are two kinds of failures of the Performance Criteria. *Ordinary* failures are failures on a measure for one month or two consecutive months. *Chronic* failures are

failures on a measure for three consecutive months. Ordinary failures may be excused up to the applicable value of F from the Table of Critical Values. Chronic failures may not be excused in that manner. \$500 is paid for each ordinary failure in excess of F. \$2,500 is paid for each Chronic failure. For example, if the value of F is 8 and there are 10 Ordinary failures and 1 Chronic failure in a month, then the Liquidated Damages for that month would be  $(10-8)*\$500 + \$2,500 = \$3,500$ . If there were 7 Ordinary failures and no Chronic failures, no Liquidated Damages would be paid.

## 7. LIQUIDATED DAMAGES; METHOD OF CALCULATION

7.1 SBC-11STATE and CLEC agree to use the following as statistical tests for evaluating the compliance of CLEC results with the Performance Criterion. These tests are applicable if the number of data points for each SBC-11STATE and CLEC is greater than or equal to 30 for a given measurement.

7.2 The following list describes the tests to be used in evaluating the performance criterion. In each test, the important concept is the probability that the CLEC's results are significantly worse than either the comparable result for SBC-11STATE or the benchmark (whichever is relevant to the test). This probability is compared with the P value from the Table of Critical Values to decide if the measure meets the Performance Criterion. Probabilities that are less than the P value are deemed to have failed the test.

For parity measures that are expressed as Averages or Means, the following (Modified) Z test applies:

$$Z = (\text{DIFF}) / \delta_{\text{DIFF}}$$

Where;

$$\text{DIFF} = M_{\text{ILEC}} - M_{\text{CLEC}}$$

$M_{\text{ILEC}}$  = ILEC Average

$M_{\text{CLEC}}$  = CLEC Average

$$\delta_{\text{DIFF}} = \text{SQRT} [\delta^2_{\text{ILEC}} (1/n_{\text{CLEC}} + 1/n_{\text{ILEC}})]$$

$\delta^2_{\text{ILEC}}$  = Calculated variance for ILEC.

$n_{\text{ILEC}}$  = number of observations or samples used in ILEC measurement

$n_{\text{CLEC}}$  = number of observations or samples used in CLEC measurement

The probability of the Z statistic is obtained from a standard normal distribution.

For parity measures that are expressed as Percentages or Proportions:

$$Z = (\text{DIFF}) / \delta_{\text{DIFF}}$$

Where;

$$DIFF = P_{ILEC} - P_{CLEC}$$

$P_{ILEC}$  = ILEC Proportion

$P_{CLEC}$  = CLEC Proportion

$$\delta_{DIFF} = \text{SQRT} [\delta_{ILEC}^2 (1/n_{CLEC} + 1/n_{ILEC})]$$

$$\delta_{ILEC}^2 = P_{ILEC} (1 - P_{ILEC})$$

$n_{ILEC}$  = number of observations or samples used in ILEC measurement

$n_{CLEC}$  = number of observations or samples used in CLEC measurement

The probability of the Z statistic is obtained from a standard normal distribution.

In the event that  $P_{ILEC} = 0$  (and low values are associated with good service), the above test cannot be used. In such cases, Fisher's Exact Test is used to calculate the probability,  $P_{FE}$ , of the data given the hypothesis of parity.:

$$P_{FE} = 1 - \sum_{x=0}^{H_{CLEC}-1} \frac{\binom{n_{CLEC}}{x} \binom{n_{ILEC}}{H_{CLEC}+H_{ILEC}-x}}{\binom{n_{CLEC}+n_{ILEC}}{H_{CLEC}+H_{ILEC}}}$$

Where;

$$H_{CLEC} = P_{CLEC} n_{CLEC}$$

$$H_{ILEC} = P_{ILEC} n_{ILEC}$$

If  $P_{ILEC} = 1$  (and high values are associated with good service), the same formula is used with the following interpretation:

$$H_{CLEC} = n_{CLEC} - P_{CLEC} n_{CLEC}$$

$$H_{ILEC} = n_{ILEC} - P_{ILEC} n_{ILEC}$$

Of course if it is also true that  $H_{CLEC} = 0$ , then  $P_{FE} = 1$  because the results are at parity.

For parity measures that are expressed as Rates or Ratios: a binomial test is used to calculate the probability of the data given the hypothesis of parity:

$$P_{Rate} = 1 - \sum_{x=0}^{H_{CLEC}-1} \binom{N}{x} p^x (1-p)^{N-x}$$

Where;

$H_{CLEC}$  = numerator for the CLEC

$H_{ILEC}$  = numerator for the ILEC

$$N = H_{CLEC} + H_{ILEC}$$

$D_{CLEC}$  = denominator for CLEC

$D_{ILEC}$  = denominator for ILEC

$$p = D_{CLEC} / (D_{CLEC} + D_{ILEC})$$

In calculating the difference between the performances the formulae given above apply when a larger CLEC value indicates a higher quality of performance. For cases in which a smaller CLEC value indicates a higher quality of performance the order of subtraction should be reversed ( i.e.,  $M_{CLEC} - M_{ILEC}$ ,  $P_{CLEC} - P_{ILEC}$ ).

For measures with benchmarks that are expressed as Averages or Means:

$$t = (DIFF) / \delta_{DIFF}$$

Where;

$$DIFF = M_{CLEC} - BM$$

$$M_{CLEC} = \text{CLEC Average}$$

$$BM = \text{Benchmark}$$

$$\delta_{DIFF} = \text{SQRT} [\delta^2_{CLEC} (1/ n_{CLEC})]$$

$$\delta^2_{CLEC} = \text{Calculated variance for CLEC.}$$

$$n_{CLEC} = \text{number of observations or samples used in CLEC measurement}$$

The probability of the t statistic is obtained from Student's distribution with  $n_{CLEC} - 1$  degrees of freedom.

For measures with benchmarks that are expressed as Percentages or Proportions:

When high proportions designate good service, the probability of the CLEC result is given by

$$\sum_{x=0}^K \binom{N}{x} B^x (1-B)^{N-x}$$

Where

$$K = PN$$

$$P = \text{CLEC proportion}$$

$$N = \text{number of observations or samples used in CLEC measurement}$$

$$B = \text{benchmark expressed as a proportion}$$

When low proportions designate good service, the probability of the CLEC result is given by

$$1 - \sum_{x=0}^{K-1} \binom{N}{x} B^x (1-B)^{N-x}$$

with the same definition of symbols as is given above.

- 7.3 The following table will be used for determining the critical probabilities that define the Performance Criterion as well as the number of non-compliant measures that may be excused in a given month. The table is read as follows: (1) determine the number of measures to which Liquidated Damages are applicable and which have sample sizes greater than or equal to 30 cases. Let this number be M. (2) Find the value of M in the columns of the table with the heading "M". (3) To the immediate right of the value of M, find the value in the column labeled "F". This is the maximum number of measures that may be failed when there are M measures being evaluated. (4) To the immediate right of F in the column labeled "P" is the critical probability for determining compliance in each statistical test performed on the M measures. Statistical tests that yield probabilities less than this value indicate failures for the sub-measure.

## 8. TABLE OF CRITICAL VALUES

M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P
1	0	0.010	71	8	0.051	141	14	0.054	211	19	0.054	281	23	0.051	351	28	0.052
2	1	0.100	72	8	0.050	142	14	0.054	212	19	0.053	282	23	0.051	352	28	0.052
3	1	0.059	73	9	0.059	143	14	0.054	213	19	0.053	283	23	0.051	353	28	0.052
4	2	0.141	74	9	0.058	144	14	0.053	214	19	0.053	284	23	0.050	354	28	0.051
5	2	0.106	75	9	0.057	145	14	0.053	215	19	0.053	285	23	0.050	355	28	0.051
6	2	0.085	76	9	0.056	146	14	0.052	216	19	0.052	286	23	0.050	356	28	0.051
7	2	0.071	77	9	0.055	147	14	0.052	217	19	0.052	287	24	0.053	357	28	0.051
8	2	0.061	78	9	0.055	148	14	0.052	218	19	0.052	288	24	0.052	358	28	0.051
9	2	0.053	79	9	0.054	149	14	0.051	219	19	0.052	289	24	0.052	359	28	0.051
10	3	0.093	80	9	0.053	150	14	0.051	220	19	0.051	290	24	0.052	360	28	0.051
11	3	0.084	81	9	0.053	151	14	0.051	221	19	0.051	291	24	0.052	361	28	0.050
12	3	0.076	82	9	0.052	152	14	0.050	222	19	0.051	292	24	0.052	362	28	0.050
13	3	0.069	83	9	0.051	153	15	0.055	223	19	0.051	293	24	0.052	363	28	0.050
14	3	0.064	84	9	0.051	154	15	0.054	224	19	0.050	294	24	0.051	364	28	0.050
15	3	0.059	85	9	0.050	155	15	0.054	225	19	0.050	295	24	0.051	365	29	0.052
16	3	0.055	86	10	0.057	156	15	0.054	226	20	0.053	296	24	0.051	366	29	0.052
17	3	0.052	87	10	0.057	157	15	0.053	227	20	0.053	297	24	0.051	367	29	0.052
18	4	0.077	88	10	0.056	158	15	0.053	228	20	0.053	298	24	0.051	368	29	0.052
19	4	0.073	89	10	0.055	159	15	0.053	229	20	0.053	299	24	0.050	369	29	0.052
20	4	0.069	90	10	0.055	160	15	0.052	230	20	0.052	300	24	0.050	370	29	0.051
21	4	0.065	91	10	0.054	161	15	0.052	231	20	0.052	301	24	0.050	371	29	0.051
22	4	0.062	92	10	0.053	162	15	0.052	232	20	0.052	302	25	0.053	372	29	0.051
23	4	0.059	93	10	0.053	163	15	0.051	233	20	0.052	303	25	0.052	373	29	0.051
24	4	0.057	94	10	0.052	164	15	0.051	234	20	0.051	304	25	0.052	374	29	0.051
25	4	0.054	95	10	0.052	165	15	0.051	235	20	0.051	305	25	0.052	375	29	0.051

APPENDIX PERFORMANCE MEASUREMENTS - SBC-11STATE

PAGE 10 OF 13

SBC-11STATE/NEXUS COMMUNICATIONS, INC.

052802

26	4	0.052	96	10	0.051	166	15	0.050	236	20	0.051	306	25	0.052	376	29	0.051
27	5	0.070	97	10	0.051	167	15	0.050	237	20	0.051	307	25	0.052	377	29	0.050
28	5	0.068	98	10	0.050	168	16	0.054	238	20	0.051	308	25	0.052	378	29	0.050
29	5	0.065	99	11	0.056	169	16	0.054	239	20	0.050	309	25	0.051	379	29	0.050
30	5	0.063	100	11	0.056	170	16	0.053	240	20	0.050	310	25	0.051	380	29	0.050
31	5	0.061	101	11	0.055	171	16	0.053	241	21	0.053	311	25	0.051	381	30	0.052
32	5	0.059	102	11	0.055	172	16	0.053	242	21	0.053	312	25	0.051	382	30	0.052
33	5	0.057	103	11	0.054	173	16	0.053	243	21	0.053	313	25	0.051	383	30	0.052
34	5	0.055	104	11	0.054	174	16	0.052	244	21	0.052	314	25	0.051	384	30	0.052
35	5	0.054	105	11	0.053	175	16	0.052	245	21	0.052	315	25	0.050	385	30	0.051
36	5	0.052	106	11	0.053	176	16	0.052	246	21	0.052	316	25	0.050	386	30	0.051
37	5	0.051	107	11	0.052	177	16	0.051	247	21	0.052	317	25	0.050	387	30	0.051
38	6	0.065	108	11	0.052	178	16	0.051	248	21	0.052	318	26	0.052	388	30	0.051
39	6	0.063	109	11	0.051	179	16	0.051	249	21	0.051	319	26	0.052	389	30	0.051
40	6	0.061	110	11	0.051	180	16	0.050	250	21	0.051	320	26	0.052	390	30	0.051
41	6	0.060	111	11	0.050	181	16	0.050	251	21	0.051	321	26	0.052	391	30	0.051
42	6	0.058	112	12	0.056	182	17	0.054	252	21	0.051	322	26	0.052	392	30	0.051
43	6	0.057	113	12	0.055	183	17	0.054	253	21	0.051	323	26	0.052	393	30	0.050
44	6	0.055	114	12	0.055	184	17	0.053	254	21	0.050	324	26	0.051	394	30	0.050
45	6	0.054	115	12	0.054	185	17	0.053	255	21	0.050	325	26	0.051	395	30	0.050
46	6	0.053	116	12	0.054	186	17	0.053	256	22	0.053	326	26	0.051	396	31	0.052
47	6	0.052	117	12	0.054	187	17	0.052	257	22	0.053	327	26	0.051	397	31	0.052
48	6	0.051	118	12	0.053	188	17	0.052	258	22	0.053	328	26	0.051	398	31	0.052
49	7	0.062	119	12	0.053	189	17	0.052	259	22	0.052	329	26	0.051	399	31	0.052
50	7	0.061	120	12	0.052	190	17	0.052	260	22	0.052	330	26	0.050	400	31	0.052
51	7	0.059	121	12	0.052	191	17	0.051	261	22	0.052	331	26	0.050	401	31	0.051
52	7	0.058	122	12	0.051	192	17	0.051	262	22	0.052	332	26	0.050	402	31	0.051
53	7	0.057	123	12	0.051	193	17	0.051	263	22	0.052	333	27	0.052	403	31	0.051
54	7	0.056	124	12	0.050	194	17	0.051	264	22	0.051	334	27	0.052	404	31	0.051
55	7	0.055	125	13	0.056	195	17	0.050	265	22	0.051	335	27	0.052	405	31	0.051
56	7	0.054	126	13	0.055	196	17	0.050	266	22	0.051	336	27	0.052	406	31	0.051
57	7	0.053	127	13	0.055	197	18	0.054	267	22	0.051	337	27	0.052	407	31	0.051
58	7	0.052	128	13	0.054	198	18	0.053	268	22	0.051	338	27	0.052	408	31	0.050
59	7	0.051	129	13	0.054	199	18	0.053	269	22	0.050	339	27	0.051	409	31	0.050
60	7	0.050	130	13	0.053	200	18	0.053	270	22	0.050	340	27	0.051	410	31	0.050
61	8	0.060	131	13	0.053	201	18	0.052	271	23	0.053	341	27	0.051	411	31	0.050
62	8	0.059	132	13	0.053	202	18	0.052	272	23	0.053	342	27	0.051	412	32	0.052
63	8	0.058	133	13	0.052	203	18	0.052	273	23	0.052	343	27	0.051	413	32	0.052
64	8	0.057	134	13	0.052	204	18	0.052	274	23	0.052	344	27	0.051	414	32	0.052
65	8	0.056	135	13	0.051	205	18	0.051	275	23	0.052	345	27	0.051	415	32	0.052
66	8	0.055	136	13	0.051	206	18	0.051	276	23	0.052	346	27	0.050	416	32	0.051
67	8	0.054	137	13	0.051	207	18	0.051	277	23	0.052	347	27	0.050	417	32	0.051
68	8	0.053	138	13	0.050	208	18	0.051	278	23	0.052	348	27	0.050	418	32	0.051
69	8	0.053	139	14	0.055	209	18	0.050	279	23	0.051	349	28	0.052	419	32	0.051
70	8	0.052	140	14	0.055	210	18	0.050	280	23	0.051	350	28	0.052	420	32	0.051



## 9. LIMITATIONS

- 9.1 SBC-11STATE will not be excused from payment of liquidated damages, as calculated by the rules set forth herein, on any grounds, except as provided in Sections 9.2 and 9.3 and 10.6. Any dispute regarding whether a SBC-11STATE performance failure is excused under that paragraph will be resolved, through negotiation, through a dispute resolution proceeding under applicable Commission rules or, if the parties agree, through commercial arbitration with the American Arbitration Association.
- 9.2 SBC-11STATE shall not be obligated to pay liquidated damages or assessments for noncompliance with a performance measurement to the extent that such noncompliance was the result of actions or events beyond SBC-11STATE's control, including but not limited to the following: (i) a Force Majeure event; (ii) an act or omission by a CLEC that is contrary to any of its obligations under its interconnection agreement with SBC-11STATE or law; (iii) environmental events beyond SBC-11STATE's control even though not considered "Force Majeure"; (iv) problems associated with third-party systems or equipment which could not be avoided SBC-11STATE through the exercise of reasonable diligence, regardless of whether or not such third-party systems or equipment were sold to or otherwise being provided to SBC-11STATE and (v) delays or other problems resulting from actions of a Service Bureau Provider acting on the CLEC's behalf for connection to SBC-LEC's OSS, including Service Bureau Provider processes, services, systems or connectivity.
- 9.3 If a Delaying Event (i) prevents a Party from performing an activity, then such activity will be excluded from the calculation of SBC-11STATE's compliance with the Performance Criteria, or (ii) only suspends SBC-11STATE's ability to timely perform the activity, the applicable time frame in which SBC-11STATE's compliance with the Performance Criteria is measured will be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the Delaying Event.

## 10. RECORDS AND REPORTS

- 10.1 SBC-11STATE will not levy a separate charge for provision of the data to CLEC called for under this Appendix. Notwithstanding other provisions of this Agreement, the Parties agree that such data and associated records will be deemed Proprietary Information.
- 10.2 Reports are to be made available to the CLEC by the 20th day following the close of the calendar month. If the 20th day falls on a weekend or holiday, the reports will be made available the next business day.

- 10.3 CLEC will have access to monthly reports through an interactive Website.
- 10.4 **SBC-11STATE** will provide billing credits for the associated liquidated damages on or before the 30th day following the due date of the performance report for the month in which the obligation arose.
- 10.5 The measurement data herein shall be collected, reported and used to calculate payments or penalties on a per CLEC operating entity basis. The results of multiple CLEC affiliates shall not be combined for any purpose under this Appendix.
- 10.6 **SBC-11STATE** will not pay liquidated damages in excess of the monthly maximum amounts listed in the table below. These thresholds are based on the aggregate damages to all CLECs in the designated state.

State	Monthly Maximum
Arkansas	\$.072M
Connecticut	\$.168M
Illinois	\$.51M
Indiana	\$.165M
Kansas	\$.101M
Michigan	\$.392M
Missouri	\$.189M
Ohio	\$.296M
Oklahoma	\$.120M
Texas	\$.713M
Wisconsin	\$.158M

## 11. AUDITS

- 11.1 CLEC and **SBC-11STATE** will consult with one another and attempt in good faith to resolve any issues regarding the accuracy or integrity of data collected, generated, and reported pursuant to this Appendix. In the event that CLEC requests such consultation and the issues raised by CLEC have not been resolved within 30 days after CLEC's request for consultation, then **SBC-11STATE** will allow CLEC to commence a mini-audit, at CLEC's expense, upon providing **SBC-11STATE** 5 days advance written notice (including e-mail).
- 11.2 CLEC is limited to auditing three (3) single measures/submeasures during the year (hereafter, "Mini-Audits"). No more than three (3) Mini-Audits will be conducted simultaneously for all CLECs, unless more than one CLEC wants the same measure/sub-measure audited at the same time, in which case, Mini-Audits of the

same measure/submeasure shall count as one Mini-Audit for the purposes of this paragraph only.

- 11.3 CLEC will bear the expense of the mini-audits, unless SBC-11STATE is found to be "materially" misreporting or misrepresenting data or to have non-compliant procedures, in which case, SBC-11STATE will pay for the costs of the third party auditor. "Materially" at fault means that a reported successful measure changes as a consequence of the audit to a missed measure, or there is a change from an ordinary missed measure to another category, if such exists. Each party to the mini-audit shall bear its own internal costs, regardless of which party ultimately bears the costs of the third party auditor. The major service categories are listed below:

Pre-Ordering/Ordering  
Provisioning  
Maintenance  
Interconnection  
Coordinated Conversions  
Collocation  
Billing

## 12. INITIAL IMPLEMENTATION

- 12.1 The Parties agree that none of the liquidated damages provisions set forth in this Appendix will apply during the first three months after first purchases of a new type of service or unbundled network element(s) associated with a particular Performance Measurement or after the introduction of a new measure. During this three-month period the Parties agree to consider in good faith any adjustments that may be warranted to the Performance Criteria for that Performance Measurement.

## 13. PERFORMANCE MEASUREMENTS

- 13.1 SBC-11STATE will provide Performance Measurements under this Agreement, in accordance with the Business Rules and associated implementation timelines contained in paragraphs 23 and 24 of the FCC Merger Conditions, and its associated Attachments. Except as otherwise provided herein, the Performance Measure Business Rules contained in the FCC Merger Conditions, including any subsequent additions, modifications and/or deletions to the Business Rules adopted pursuant to FCC Merger Conditions, Attachment A, paragraph 4, shall also be incorporated into this Agreement by reference. As provided in Section 6.1 herein, liquidated damages apply to available, non-diagnostic measurements of the FCC Merger Conditions, when SBC-11STATE delivers non-compliant performance as defined in 3.1.3. SBC-11STATE will also report results for any measurements that have been ordered by the state commission that approved this agreement, although liquidated damages shall not apply to such measurements. SBC-11STATE performance shall be measured by the Business Rules in effect on the first date of each month in which the activity subject to measurement occurred.

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS BELL TELEPHONE COMPANY )  
(Ameritech Illinois) )  
and Nexus Communications, Inc. )

Joint Petition for Approval of Negotiated )  
Interconnection Agreement dated July 8, 2002 )  
pursuant to 47 U.S.C. §§ 252 (a)(1) and 252(e) )

02 - \_\_\_\_\_

STATEMENT IN SUPPORT OF JOINT PETITION FOR APPROVAL

I, Eric Larsen, am Director-Negotiations for Southwestern Bell Telephone, LP. d/b/a Southwestern Bell Telephone Company/Illinois Bell Telephone Company Negotiations and Interconnection, and submit this Statement in Support of the Joint Petition for Approval of a Negotiated Interconnection Agreement between Nexus Communications, Inc. and Ameritech Illinois.

The attached interconnection agreement (the "Agreement") between Illinois Bell Telephone Company ("Ameritech Illinois") and Nexus Communications, Inc. ("NEXUS") was reached through voluntary negotiations between the parties. Accordingly, Ameritech Illinois and NEXUS requests approval pursuant to Sections 252(a)(1) and 252(e) of the Telecommunications Act of 1996 (sometimes referred to as the "Act").

In accordance with Sections 251 and 252 of the Act, the parties engaged in good faith negotiations and agreement was reached on July 8, 2002. The Agreement expires August 7, 2003 and establishes the financial and operational terms for: the physical interconnection between Ameritech Illinois' and Nexus Communications, Inc. networks based on mutual unbundled access to Ameritech Illinois' network elements, including Ameritech Illinois' operations support systems functions; collocation; resale; and a variety of other business relationships. Absent the receipt by one Party of written notice from the other Party at least within 180 days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term, this Agreement shall remain in full force and effect on and after the expiration of the Term until terminated by either Party. The key provisions of the Agreement are summarized as follows:

Access to Rights-of Way - Section 251(b)(4)

Ameritech shall provide to Nexus Communications, Inc. access to Poles, Conduits and Rights of Ways pursuant to the applicable Appendix ROW.

Collocation - Section 251(c)(6)

Collocation will be provided pursuant to the applicable Appendix Collocation.

Database Access

Ameritech shall provide Nexus Communications, Inc. nondiscriminatory access to databases and associated signaling necessary for call routing and completion pursuant to the applicable Appendix UNE.

Interconnection pursuant to Section 251(c)(2)(A), (B), and (C): 47CFR §51.305(a)(1)

Ameritech shall provide to Nexus Communications, Inc. Interconnection of the Parties' facilities and equipment for the transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic pursuant to the applicable Appendix ITR.

Number Portability – Section 251(b)(2)

The Parties shall provide to each other Permanent Number Portability (PNP) on a reciprocal basis as outlined in the applicable Appendix Number Portability.

Other Services

- ? ? 911 and E911 Services, Ameritech will make nondiscriminatory access to 911 and E911 services available under the terms and conditions of the applicable Appendix 911.
- ? ? AIN, Ameritech will provide Nexus Communications, Inc. with access to Advanced Intelligent Network (AIN) platform, AIN Service Creation Environment (SCE) and AIN Service Management System (SMS) based upon ILEC-specific rates, terms, conditions and means of access to be negotiated by the Parties.
- ? ? Directory Assistance (DA), Ameritech will provide nondiscriminatory access to DA services under the terms and conditions identified in the applicable Appendix DA.
- ? ? Operator Services (OS), Ameritech shall provide nondiscriminatory access to Operator Services under the terms and conditions identified in the applicable Appendix OS.
- ? ? Signaling System 7 Interconnection, Ameritech shall perform SS7 interconnection services for CLEC pursuant to the applicable Appendix SS7
- ? ? Resale, Ameritech shall provide to Nexus Communications, Inc. Communication services for resale at wholesale rates pursuant to the applicable Appendix Resale.
- ? ? Transmission and Routing of Switched Access Traffic, Ameritech shall provide to Nexus Communications, Inc. certain trunk groups (Meet Point Trunks) under certain parameters pursuant to the applicable Appendix ITR.
- ? ? Transmission and Routing of Telephone Exchange Service Traffic, pursuant to applicable Appendix Compensation.
- ? ? Unbundled Network Elements, Nexus Communications, Inc. agrees to provide Ameritech with those services as required by Section 251(b) and/or 251(c) of the Act, if applicable.

Under Sections 252(e)(1) and (2) of the Act, the Commission may reject the Agreement only if the Agreement or a portion thereof "... discriminates against a telecommunications carrier not a party to the agreement" or "... implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity". Because the Agreement is the product of voluntary negotiation, it does not have to comply with the standards set forth in Sections 251(b) and (c), thus rendering inapplicable the pricing standards set forth in Section 252(d).

The Agreement is not discriminatory. Ameritech Illinois will make this Agreement available to any other telecommunications carrier operating within Ameritech Illinois' service territory. Other

telecommunications carriers can negotiate their own arrangements pursuant to the applicable provisions of the Act.

The Agreement is the product of good faith, arms-length negotiations between competitors. Overall, the Agreement is acceptable to both parties and it shows that two carriers, negotiating in good faith under the terms of the Act, can arrive at a mutually beneficial business arrangement that overall meets their individual business interests and furthers the cause of competition in the local exchange market. This is precisely the process Congress envisioned in crafting the Act. See S. Rep. No. 23, 104th Cong., 1st Sess. at p. 19 ("The Committee intends to encourage private negotiation of interconnection agreements.") (The Conference Committee on the Telecommunications Act of 1996 receded to the Senate on Sections 252 (a) and (b), see Joint Explanatory Statement of the Committee of Conference at p. 125).

The Agreement is consistent with the public interest, convenience and necessity. It is a comprehensive agreement that tailors the interconnection and service arrangements previously approved by the Commission for competition to meet the individual needs of the parties and thereby will promote competition for data and transport services. The Agreement will enhance Nexus Communications, Inc.' ability to quickly begin providing residential and business subscribers in Ameritech Illinois' service territory with a competitive alternative for their data and transport services. Under the Agreement, customers will be able to choose Nexus Communications, Inc. instead of Ameritech Illinois for these services.

The Agreement meets all the requirements of the Act and the Commission should approve it.

ILLINOIS  
COMMERCE COMMISSION

AUG 8 3 07 PM '02

CHIEF CLERK'S OFFICE

STATE OF ILLINOIS )

COUNTY OF Cook )

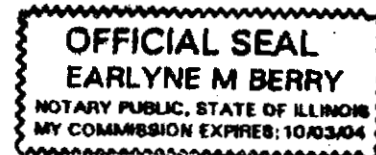
VERIFICATION

Eric Larsen, being duly sworn, states on oath that he is Director - Negotiations for Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company/Illinois Bell Telephone Company Negotiations and Interconnection, and that the facts stated in the foregoing Joint Petition for Approval of Negotiated Agreement and Statement in Support of Joint Petition for Approval are true and correct to the best of his knowledge, information and belief.

Eric Larsen  
Eric Larsen

Subscribed and sworn to before me this 18 day of June, 2002.

Earlyne M. Berry  
Notary Public



CLEC Name and State(s)  
Type of Agreement

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>ILLINOIS BELL TELEPHONE COMPANY (AMERITECH ILLINOIS)</b>	)	
<b>and NEXUS COMMUNICATIONS, INC.</b>	)	
	)	<b>02-0514</b>
Joint Petition For Approval of Negotiated	)	
Interconnection Agreement dated	)	
July 8, 2002, pursuant to 47 USC. § 252.	)	

---

**AMENDED  
VERIFIED STATEMENT OF JAMES ZOLNIEREK**

My name is James Zolnierек and I am employed by the Illinois Commerce Commission as a Senior Policy Analyst in the Telecommunications Division. I graduated from Michigan State University with a Bachelor of Science degree in mathematics in 1990. In 1993 I received a Master of Arts degree and in 1996 I received a Doctor of Philosophy Degree. Both of these degrees are economics degrees from Michigan State University. Among my duties as a Policy Analyst is to review interconnection agreements and provide a recommendation as to their approval.

**SYNOPSIS OF THE AGREEMENT**

The agreement between ILLINOIS BELL TELEPHONE COMPANY ("AMERITECH ILLINOIS") and NEXUS COMMUNICATIONS, INC. ("NEXUS") dated July 8, 2002 becomes effective (10) calendar days after the Commission approves it and expires September 8, 2003, though it will remain in full force and effect until, with appropriate notice, it is terminated by either party. The underlying agreement establishes, between AMERITECH ILLINOIS and NEXUS, certain financial and



operational terms for interconnection, access to unbundled network elements, resale and other services addressed in Section 251 of the Act.

The purpose of my verified statement is to examine the agreement based on the standards enunciated in section 252(e)(2)(A) of the 1996 Act. Specifically, this section states that:

The State commission may only reject an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that:

- (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

Also, under authority granted the Commission by Section 252(e)(3) of the 1996 Telecom Act, this agreement has been reviewed for consistency with the requirements of the Illinois PUA and regulations, rules and orders adopted pursuant thereof.

## **I APPROVAL UNDER SECTION 252(e)**

### **A. DISCRIMINATION**

The first issue that must be addressed by the Commission in approving or rejecting a negotiated agreement under Section 252(e)(2)(A) is whether it discriminates against a telecommunications carrier that is not a party to the agreement.

Discrimination is generally defined as giving preferential treatment to the requesting carrier to the detriment of a telecommunications carrier that is not a party to the agreement. In previous dockets, Staff has taken the position that in order to determine if a negotiated agreement is discriminatory, the Commission should determine if all

similarly situated carriers are allowed to purchase the service under the same terms and conditions as provided in the agreement. I recommend that the Commission use the same approach when evaluating this negotiated agreement.

A carrier should be deemed to be similarly situated to NEXUS for purposes of this agreement if telecommunications traffic is exchanged between such carrier and AMERITECH ILLINOIS for termination on each other's networks and if such carrier imposes costs on AMERITECH ILLINOIS that are no higher than the costs imposed by NEXUS. If a similarly situated carrier is allowed to purchase the service(s) under the same terms and conditions as provided in this contract, then this contract should not be considered discriminatory.

#### **B. PUBLIC INTEREST**

The second issue that needs to be addressed by the Commission in approving or rejecting a negotiated agreement under Section 252(e)(2)(A) is whether it is contrary to the public interest, convenience, and necessity. I recommend that the Commission examine the agreement on the basis of past Commission orders, and state and federal law to determine if the agreement is consistent with the public interest.

In previous dockets, Staff took the position that negotiated agreements should be considered economically efficient if the services are priced at or above their Long Run Service Incremental Costs ("LRSICs"). Requiring that a service be priced at or above its LRSIC ensures that the service is not being subsidized and complies with the Commission's pricing policy. To the best of my knowledge, all of the services in this agreement, for which there is a LRSIC test on file with the Commission, are priced at or above their respective LRSICs.

Nothing in this agreement leads me to the conclusion that the agreement is inequitable, inconsistent with past Commission Orders, or in violation of state or federal law. Therefore, I recommend that the Commission approve this agreement.

## **II IMPLEMENTATION**

In order to implement the AMERITECH ILLINOIS- NEXUS agreement, the Commission should require AMERITECH ILLINOIS to, within five (5) days from the date the agreement is approved, modify its tariffs to reference the agreement. Such a requirement is consistent with the Commission's Orders in previous dockets and allows interested parties access to the agreement. The following sections of AMERITECH ILLINOIS' tariffs should reference the AMERITECH ILLINOIS- NEXUS Agreement: Agreements with Telecommunications Carriers (ICC No. 21 Section 19.15).

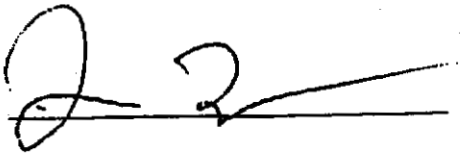
Also, in order to assure that the implementation of the Agreement is in public interest, AMERITECH ILLINOIS should implement this Agreement by filing a verified statement with the Chief Clerk of the Commission, within five (5) days of approval by the Commission of the agreement. The statement should indicate that the Agreement is the same as the Agreement filed in this docket with the verified petition; the Chief Clerk should place the Agreement on the Commission's web site under Interconnection Agreements.

For the reasons enumerated above, I recommend that the Commission approve this agreement pursuant to Section 252(e) of the Telecommunications Act of 1996.

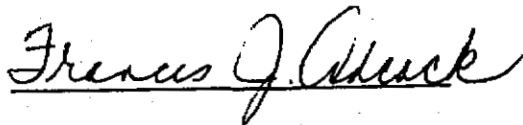
VERIFICATION

STATE OF ILLINOIS            )  
                                      ) SS  
COUNTY OF SANGAMON        )

I, James Zolnierrek, do on oath depose and state that if called as a witness herein, I would testify to the facts contained in the foregoing document based upon personal knowledge.



SIGNED AND SWORN TO BEFORE ME THIS 4<sup>th</sup> DAY OF September, 2002.



NOTARY PUBLIC



STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company  
(Ameritech Illinois) and Nexus  
Communications, Inc.

:  
:  
:  
:  
:  
:  
:  
:

02-0514

Joint Petition for Approval of  
Negotiated Interconnection  
Agreement dated July 8, 2002,  
pursuant to 47 U.S.C. §252.

ORDER

By the Commission:

**Procedural History**

In this proceeding, Illinois Bell Telephone Company ("Ameritech") and Nexus Communications, Inc. ("Nexus") filed with the Illinois Commerce Commission ("Commission") a verified joint petition seeking the Commission's approval of a negotiated interconnection agreement ("Interconnection Agreement" or "Agreement") dated July 8, 2002, pursuant to Sections 252(a)(1) and 252(e) of the federal Telecommunications Act of 1996 ("TA 96"), 47 U.S.C. 151 *et seq.* A copy of the Agreement was filed with the joint petition. Also attached to the joint petition is a verified statement in support thereof from Eric Larsen, Director-Negotiations for Southwestern Bell Telephone LP, d/b/a Southwestern Bell Telephone Company/Illinois Bell Telephone Company Negotiations and Interconnection.

Pursuant to due notice, this matter came on for hearing before a duly authorized administrative law judge of the Commission at its offices in Springfield, Illinois. Ameritech and the Commission Staff ("Staff") entered appearances through their respective counsel. An appearance was also entered by a representative of Nexus. The verified statement of James Zolniersek of the Commission's Telecommunications Division was admitted into the record. In his statement, Mr. Zolniersek recommended approval of the Agreement for the reasons, and subject to the conditions, described below. At the conclusion of the hearing, the record was marked "Heard and Taken." No petitions to intervene were received, and no other appearances were entered.

**Section 252 of the Telecommunications Act of 1996**

Section 252(a)(1) of TA 96 allows parties to enter into negotiated agreements regarding requests for interconnection, services, or network elements pursuant to Section 251. Ameritech and Nexus have negotiated such an Agreement, and have submitted it for approval in this proceeding.

Section 252(a) of TA 96 provides, in part, that "[a]ny interconnection agreement adopted by negotiation . . . shall be submitted for approval to the State commission." Section 252(e)(1) provides that a state commission to which such an agreement is submitted "shall approve or reject the agreement, with written findings as to any deficiencies." Section 252(e)(2) provides that the state commission may only reject the negotiated agreement if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or that "the implementation of such agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity."

Section 252(e)(4) provides that the agreement shall be deemed approved if the state commission fails to act within 90 days after submission by the parties. This provision further states that "[n]o State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section." Section 252(e)(5) provides for preemption by the Federal Communications Commission if a state commission fails to carry out its responsibility and Section 252(e)(6) provides that any party aggrieved by a state commission's determination on a negotiated agreement may bring an action in an appropriate federal district court.

Section 252(h) requires a state commission to make a copy of each agreement approved under subsection (e) "available for public inspection and copying within 10 days after the agreement or statement is approved."

Section 252(i) requires a local exchange carrier to "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

### **Purpose and Terms of the Interconnection Agreement**

The Interconnection Agreement between Ameritech and Nexus establishes financial and operational terms for the interconnection of their respective telecommunications networks and facilities. Among other things, the Agreement contains terms applicable to physical interconnection, access to right-of-way, collocation, transmission and routing of traffic, access to unbundled network elements, number portability, database access, and the purchase of services for resale. The Agreement will remain in effect until September 8, 2003, and will thereafter continue in effect unless either party provides written notice of termination.

### **Staff Recommendation**

Staff reviewed the Agreement in light of the criteria contained in Section 252(e)(2)(A) of TA 96. Under this section, the Commission may only reject an agreement, or any portion thereof, adopted by negotiation under subsection (a) if it finds that (i) the agreement, or portion thereof, discriminates against a telecommunications

carrier not a party to the agreement; or (ii) the implementation of such agreement, or portion thereof, is not consistent with the public interest, convenience, and necessity.

With regard to the issue of discrimination, Staff's position is that in order to determine if a negotiated agreement is discriminatory, the Commission should determine if all similarly situated carriers are allowed to purchase the service under the same terms and conditions as provided in the Agreement. Staff believes a carrier should be deemed to be a similarly situated carrier for purposes of this Agreement if telecommunications traffic is exchanged between it and Ameritech for termination on each other's networks and if it imposes costs on Ameritech that are no higher than costs imposed by Nexus. If a similarly situated carrier is allowed to purchase the same service(s) under the same terms and conditions as provided in this contract, then Staff says this contract should not be considered discriminatory.

With regard to the public interest, convenience and necessity, Staff recommends that the Commission examine the Agreement on the basis of economic efficiency, equity, past Commission orders and state and federal law. Mr. Zolnierek asserted that to the best of his knowledge, all services in the Agreement for which there are long run service incremental cost ("LRSIC") tests on file with the Commission are priced at or above their respective LRSICs, and thus should be considered economically efficient. Staff concluded, and the Commission agrees, that implementation of the Agreement would be consistent with the public interest.

Staff concluded that the Agreement should be approved, subject to Staff's recommendations regarding implementation. With respect to implementation of the Agreement, Staff recommended that the Commission require Ameritech to, within five days from the date the Agreement is approved, modify its tariffs to reference the Agreement for each service. Staff stated that this requirement is consistent with the Commission's orders in previous negotiated agreement dockets and allows interested parties access to the Agreement. Staff recommended that such references be included in the following section of Ameritech's tariffs: Agreements with Telecommunications Carriers (ICC No. 21, Section 19.15).

In addition, Staff recommended that the Commission require Ameritech to file a verified statement with the Chief Clerk of the Commission, within five days of approval by the Commission, that the approved Agreement is the same as the Agreement filed in this docket with the verified joint petition. Staff further recommended that the Commission direct the Chief Clerk to place the Agreement on the Commission's web site under "Interconnection Agreements." The Commission concludes that Staff's recommendations regarding implementation of the Agreement are reasonable and should be adopted.

### Findings and Ordering Paragraphs

The Commission, having considered the entire record herein, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (2) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (3) the Agreement does not discriminate against a telecommunications carrier not a party to the Agreement and is not contrary to the public interest; nor is the Agreement inequitable, inconsistent with past Commission orders, or in violation of state or federal law;
- (4) in order to assure that the implementation of the Agreement is in the public interest, Ameritech should implement the Agreement by filing a verified statement with the Chief Clerk of the Commission, within five days of approval by the Commission, that the approved Agreement is the same as the Agreement filed in this docket with the verified joint petition; the Chief Clerk should place the Agreement on the Commission's web site under "Interconnection Agreements";
- (5) within five days of the entry of this Order, Ameritech should modify its tariffs to reference the Agreement in the manner recommended by Staff and described in the prefatory portion of this Order above;
- (6) the Agreement should be approved as hereinafter set forth;
- (7) approval of this Agreement does not have any precedential affect on any future negotiated agreements or Commission Orders.

IT IS THEREFORE ORDERED by the Commission that the Agreement between Ameritech and Nexus is hereby approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that Ameritech shall comply with Findings (4) and (5) hereinabove.



IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 23rd day of October, 2002.

(SIGNED) KEVIN K. WRIGHT

Chairman